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TAGS: ICRC, PARM, PFOR

SUBJECT: INTERNATIONAL HUMANITARIAN LAW

REF: NATO 2879; NATO 2662 (PARA 2)

1. IN RESPONSE TO REFTELS, FOLLOWING IS BACKGROUND AND GUIDANCE ON DEVELOPMENTS IN WORK ON DRAFT PROTOCOLS ON INTERNATIONAL HUMANITARIAN LAW.

2. INTERNATIONAL HUMANITARIAN LAW APPLICABLE IN ARMED CONFLICT CONSISTS FOR MOST PART OF FOUR GENEVA CONVENTIONS OF 1949 FOR THE PROTECTION OF WAR VICTIMS, TO WHICH THE US IS PARTY, HAGUE CONVENTIONS OF 1907, AND CUSTOMARY LAWS OF WAR.

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3. EFFORTS TO UPDATE THIS BODY OF LAW BEGAN IN THE MID-1950'S AND GOT SERIOUSLY UNDER WAY WHEN CONFERENCES OF GOVERNMENT EXPERTS WERE HELD ON THIS SUBJECT IN 1971 AND 1972 IN GENEVA UNDER THE AUSPICES OF THE INTERNATIONAL COMMITTEE

O? THE RED CROSS (ICRC). ON BASIS OF TWO CONFERENCES OF GOVERNMENT EXPERTS AS WELL AS OTHER CONSULTATIONS, ICRC PREPARED TWO DRAFT PROTOCOLS TO 1949 GENEVA CONVENTIONS WHICH BECAME BASIS OF WORK OF DIPLOMATIC CONFERENCE.

4. FIRST DRAFT PROTOCOL DEALS WITH INTERNATIONAL ARMED CONFLICTS. SECOND PROTOCOL DEALS WITH NON-INTERNATIONAL CONFLICTS (E.G., CIVIL WARS). BOTH PROTOCOLS HAVE SECTIONS

DEALING WITH APPLICATION OF THE LAW, WOUNDED AND SICK, MEANS AND METHODS OF COMBAT, PROTECTION OF THE CIVILIAN POPULATION, AND FIRST DRAFT PROTOCOL ALSO HAS SECTIONS ON MEDICAL AIRCRAFT, PW STATUS, CIVIL DEFENSE AND PENAL SANCTIONS. FIRST PROTOCOL CONTAINS 90 DRAFT ARTICLES PLUS AN ANNEX; SECOND CONTAINS 47.

5. SWISS GOVERNMENT CONVENED DIPLOMATIC CONFERENCE ON REAFFIRMATION AND DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW APPLICABLE IN ARMED CONFLICTS IN GENEVA FEB. 20, TO MARCH 29, 1974, AND SECOND SESSION, AGAIN IN GENEVA, FEB. 3 TO APRIL 19, 1975. FIRST SESSION, DOMINATED BY POLITICAL ISSUES, MADE LITTLE PROGRESS. AT SECOND SESSION, CONFERENCE GOT DOWN TO WORK AND BY END ALMOST 80 DRAFT ARTICLES HAD BEEN ADOPTED AT CONFERENCE MAIN COMMITTEE LEVEL (BUT NONE YET IN CONFERENCE PLENARY). DELEGATION REPORT ON SECOND SESSION IS BEING PREPARED AND WILL DISCUSS IMPORTANT ARTICLES ; REPORT WILL BE POUCHED TO YOU, HOPEFULLY NEXT MONTH. THIRD, AND HOPEFULLY FINAL, SESSION OF CONFERENCE HAS BEEN SET FOR EIGHT WEEKS IN GENEVA BEGINNING APRIL 21, 1976.

6. CONFERENCE WORK HAS BEEN ORGANIZED AS FOLLOWS. COMMITTEE I DEALS WITH GENERAL PROBLEMS; E.G., IT ADOPTED ARTICLES CONCERNING PROTECTING POWERS AND SCOPE OF PROTOCOLS. COMMITTEE II DEALS WITH WOUNDED, SICK AND SHIPWRECKED, CIVIL DEFENSE AND RELIEF. IT HAS ALSO ADOPTED IMPORTANT ARTICLES FOR THE PROTECTION OF MEDICAL AIRCRAFT. COMMITTEE III DEALS WITH MEANS AND METHODS OF COMBAT AND CONFIDENTIAL

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PROTECTION OF THE CIVILIAN POPULATION. THIS COMMITTEE HAS ADOPTED SOME OF THE MOST DIFFICULT ARTICLES BEFORE IT; AS ADOPTED BY COMMITTEE, THEY ARE IN GENERAL ACCORD WITH USG POSITIONS.

7. IN ADDITION, THERE IS AD HOC COMMITTEE ON CONVENTIONAL WEAPONS. THIS COMMITTEE CREATED AT FIRST SESSION OF DIPLOMATIC CONFERENCE IN RESPONSE TO PUSH BY SWEDES AND OTHERS TO BAN OR RESTRICT CONVENTIONAL WEAPONS DEEMED TO CAUSE UNNECESSARY SUFFERING OR TO BE INDISCRIMINATE IN EFFECT. IN VIEW OF SCHEDULING BY ICRC OF CONFERENCE OF GOVERNMENT EXPERTS TO CONSIDER ISSUES, FIRST SESSION OF DIPLOMATIC CONFERENCE DID NOTHING OF SUBSTANCE ON WEAPONS ISSUES.

WHILE USG PREVIOUS TO 1973 HAD INSISTED SUCH CONVENTION WEAPONS ISSUES BE DEALT WITH IN DISARMAMENT FORA, IN NOVEMBER 1973 WE AGREED TO PARTICIPATE IN THIS EXPERT WORK UNDER ICRC AUSPICES, WITHOUT PREJUDGING OUR ULTIMATE POSITION. EXPERTS MEETING WAS HELD IN LUCERNE SEPT 24-OCT. 18, 1974, AND REVIEWED INCENDIARY WEAPONS, SMALL CALIBER HIGH VELOCITY WEAPONS, FRAGMENTATION AND BLAST

WEAPONS, TIME DELAY AND TREACHEROUS WEAPONS, AND FUTURE WEAPONS. LUCERNE CONFERENCE AND SECOND SESSION OF DIPLOMATIC CONFERENCE AGREED MORE EXPERT WORK REQUIRED, AND AS RESULT SECOND SESSION OF EXPERTS CONFERENCE ON WEAPONS HAS BEEN SCHEDULED TO BE HELD IN LUGANO JAN. 28 TO FEB. 26, 1976. IN VIEW OF THIS, AGAIN NO ARTICLES WERE ADOPTED AT SECOND SESSION OF DIPLOMATIC CONFERENCE, BUT THERE WAS AGREEMENT TO LOOK AT SPECIFIC PROPOSALS AT EXPERTS MEETING.

8. THROUGHOUT NEGOTIATIONS, WE HAVE WORKED CLOSELY WITH MOST NATO AND CERTAIN OTHER ALLIED COUNTRIES. IN CONTEXT OF GENERAL HUMANITARIAN LAW ISSUES, OUR PRINCIPAL CAUCUS GROUP HAS BEEN WESTERN EUROPEANS AND OTHER GROUP (I.E., SAME AS UN REGIONAL GROUP). ON WEAPONS ISSUES, WHERE SWEDEN AND NORWAY HAVE BEEN OPPOSING USG POSITIONS, WE HAVE CAUCUSED IN "PARIS GROUP" WHICH CONSISTS OF EC 9 PLUS CANADA AND US. DEFENSE MINISTRIES HAVE BEEN INVOLVED ACTIVELY.

9. WITH REFERENCE TO FRG CONCERNS REPORTED REFTELS, WE
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NOTE THERE HAVE BEEN OTHER REPORTS OF FRG CONCERNS ABOUT THIS CONFERENCE. DOD RECENTLY HAS HAD INFORMAL CONSULTATIONS WITH FRG MOD REPS AND HAS ATTEMPTED TO ALLAY SOME OF FRG MISAPPREHENSIONS AND CONCERNS. FURTHER, DOD HAS OFFERED TO HOLD AS MORE FORMAL BILATERAL MEETING WITH FRG MOD REPS ON THIS SUBJECT. WE SHALL CONTINUE TO REVIEW PROVISIONS ON CONDUCT OF WARFARE AS WELL AS OTHER PROVISIONS IN DRAFT PROTOCOLS, AND AT THIS TIME BELIEVE THAT RESULTS THUS FAR ARE GENERALLY ACCEPTABLE AND IN SOME WAYS COULD BE VERY BENEFICIAL.

10. IN TALKING WITH PECK, YOU MAY WISH TO POINT OUT THAT THERE HAS BEEN EXTREMELY CLOSE COORDINATION OF US-UK POSITIONS ON ALL SUBJECTS IN THIS AREA. NATO BACKSTOPPERS IN HMG MAY WISH TO CONSULT WITH FREELAND AND EATON OF FCO LEGAL OFFICE AND WITH JAMES MAKIN AND COL. SIR DAVID HUGHES-MORGAN OF MINISTRY OF DEFENSE. KISSINGER

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